Table of Contents

Part Eight Fair hearings/expedited administrative appeals 1

80.00 Fair hearings and expedited administrative appeals 1

80.01 Definitions 1

80.02 Informing individuals of hearing procedures 1

80.03 Right to hearing 2

80.04 Request for hearing 3

80.05 AHS Secretary's decision and further appeal 3

80.06 Implementation of fair hearing decisions 5

80.07 Expedited administrative appeals 6

81.00 Disability determination appeal 9

82.00 Maintaining benefits/eligibility pending fair hearing 10

83.00 [Reserved] 11

Part Eight
Fair hearings/expedited administrative appeals

80.00 Fair hearings and expedited administrative appeals[1] (01/01/2018, GCR 17-049)

80.01 Definitions[2] (01/15/2017, GCR 16-101)

Fair hearing request	A clear expression, either orally or in writing, by an individual (applicant or enrollee) to have any action by AHS affecting the individual's eligibility or level of benefits or services reviewed by the AHS Human Services Board. A request for an expedited administrative appeal will also be considered a request for a fair hearing and will be forwarded to the Human Services Board.
Fair hearings entity	The Human Services Board, the body designated by law to hear fair hearings of eligibility determinations or redeterminations. AHS reviews requests for expedited administrative appeals pursuant to § 80.07.

80.02 Informing individuals of hearing procedures[3] (01/01/2018, GCR 17-049)

(a) In general	Fair hearings are processed in accordance with fair hearing rules as promulgated by the Human Services Board pursuant to 3 VSA § 3091(b).
(b) Requesting a fair hearing	An individual may submit a fair hearing request either orally or in writing by contacting AHS or the Human Services Board. See § 80.04(a) for the methods individuals may use to submit a fair hearing request. A fair hearing request may be submitted by the individual, their authorized representative as defined in § 3.00, their legal counsel, a relative, a friend, or another spokesperson. The fair hearing request process must comply with accessibility requirements in § 5.01(c).[4] An individual may request an expedited administrative appeal by indicating that the time otherwise permitted for a fair hearing could jeopardize their life or health or ability to attain, maintain or regain maximum function. For the rule on expedited administrative appeals, see § 80.07.

[1] For rules that govern Managed Care Entity appeals, fair hearings and grievances, refer to DVHA Rule 7110.

[2] 45 CFR § 155.505.

[3] 42 CFR § 431.206; 45 CFR § 155.515.

[4] 45 CFR §§ 155.505(e) and (f).

(c) Notification of hearing rights	AHS will, at the times specified in § 68.01(c), provide every individual in writing with an explanation of their fair-hearing rights as described in § 68.01(b)(2) and their right to request an expedited administrative appeal pursuant to § 80.07.
80.03 Right to hearing (01/01/2018, GCR 17-049)	
(a) When a hearing is required[5]	AHS will grant an opportunity for a hearing to any individual who requests it because AHS terminates, suspends, denies or reduces their eligibility, reduces their level of benefits or services, their claim is not acted upon with reasonable promptness, they are aggrieved by any other action taken by AHS affecting their receipt of assistance, benefits or services or by agency policy as it affects their situation, or they believe an action by AHS has been taken erroneously. This includes, if applicable: (1) A determination of the amount of medical expenses which must be incurred to establish eligibility in accordance with § 7.03(a)(8) or § 8.06; (2) A determination of income for the purposes of imposing premiums and cost-sharing requirements; (3) A determination for any month that an individual is ineligible for APTC because the individual is considered eligible for other MEC under § 12.02(b) and § 23.00. This includes, but is not limited to, determinations of affordability and minimum value for employer-sponsored plans; (4) An initial determination of eligibility, including the amount of APTC, the Vermont Premium Reduction and level of federal or state CSR; (5) A redetermination of eligibility, including the amount of APTC, the Vermont Premium Reduction and level of federal or state CSR; (6) A failure by AHS to provide timely notice of a determination; and (7) A determination of eligibility for a special enrollment period.
(b) Exception: SSI enrollees	An applicant for or recipient of SSI/AABD benefits who is denied SSI/AABD benefits or has their SSI/AABD benefits terminated because the SSA or its agent found the individual to be not disabled, may not appeal the Medicaid denial or termination that results from this action by the SSA or its agent to the Human Services Board (see Disability Determination Appeal under § 81.00).
(c) Exception: Mass changes	There is no right to a fair hearing or an expedited administrative appeal when either state or federal law requires automatic case adjustments for

[5] 42 CFR § 431.220; 45 CFR § 155.505.

	classes of enrollees, unless the reason for an individual's appeal is incorrect eligibility determination.
80.04 Request for hearing[6] (01/01/2018, GCR 17-049)	
(a) Method for requesting a fair hearing	An individual, or an authorized representative on behalf of an individual, or a person identified at § 80.02(b), may submit a fair hearing request: (1) By telephone; (2) Via mail; (3) In person; (4) Through other commonly available electronic means; and (5) Via the internet.
(b) AHS's responsibilities related to a fair hearing request[7]	AHS will: (1) Assist the individual making the fair hearing request, if requested; (2) Not limit or interfere with the individual's right to make a fair hearing request; and (3) Consider a fair hearing request to be valid if it is submitted in accordance with § 80.03 and paragraphs (a) and (c) of this subsection § 80.04.
(c) Timely request	An individual must request a fair hearing within 90 days from the date that notice of decision is sent by AHS (see § 68.01(b)(1)).
(d) Scope of fair hearing request[8]	If an individual has been denied eligibility for Medicaid, AHS will treat an appeal of a determination of eligibility for APTC or CSR as including a request for an appeal of the Medicaid determination.
80.05 AHS Secretary's decision and further appeal (01/15/2017, GCR 16-101)	
(a) AHS Secretary's decision[9]	(1) The Secretary of AHS will: (i) Adopt the Human Services Board's decision or order, except that the Secretary may reverse or modify a decision or order

[6] 42 CFR § 431.221; 45 CFR § 155.520.

[7] 45 CFR § 155.520(a).

[8] 42 CFR § 431.221(e).

[9] 3 VSA § 3091(h).

	of the Human Services Board if: (A) The Human Services Board's findings of fact lack any support in the record; or (B) The decision or order implicates the validity or applicability of any agency policy or rule. (ii) Issue a written decision setting forth the legal, factual or policy basis for reversing or modifying a decision or order of the Human Services Board. (2) An order of the Human Services Board will become the final and binding decision of AHS upon its approval by the Secretary. The Secretary will either approve, modify or reverse the Human Services Board's decision and order within 15 days of the date of the Human Services Board's decision and order. If the Secretary fails to issue a written decision within 15 days as required by this paragraph (a)(2), the Human Services Board's decision and order will be deemed to have been approved by the Secretary. (3) Paragraphs (a)(1) and (a)(2) above do not apply to decisions made pursuant to § 80.07.
(b) Judicial review of AHS Secretary's decision[10]	An individual may, at the same time or independent of an HHS appeal (as described in (c) of this subsection), if applicable, appeal a decision of the AHS Secretary, made pursuant to § 80.05(a)(2), to the Supreme Court. Such appeals shall be pursuant to Rule 13 of the Vermont Rules of Appellate Procedure. The Supreme Court may stay the Secretary's decision upon the individual's showing of a fair ground for litigation on the merits. The Supreme Court will not stay the Secretary's order insofar as it relates to a denial of retroactive benefits.
(c) HHS appeal[11]	(1) An individual may make an appeal request to the HHS appeals entity within the time frame described in (2) of this paragraph (c) if the individual disagrees with the order of the Human Services Board or the AHS Secretary's reversal or modification, made pursuant to § 80.05(a)(2), regarding: (i) A determination for any month that an individual is ineligible for APTC because the individual is considered eligible for other MEC under § 12.02(b) and § 23.00. This includes, but is not limited to, determinations of affordability and minimum value for employer-sponsored plans; (ii) An initial determination of eligibility, including the amount of APTC, the Vermont Premium Reduction and level of federal

[10] 3 V.S.A. § 3091(h)(3); 45 CFR § 155.505(g).

[11] 45 CFR § 155.520(c).

	or state CSR; (iii) A redetermination of eligibility, including the amount of APTC, the Vermont Premium Reduction and level of federal or state CSR; and (iv) A failure by AHS to provide timely notice, as required by § 68.02, in regard to the determinations described in (i) through (iii) above. (2) An appeal request to the HHS appeals entity under (1) of this paragraph (c) must be made within 30 days of the date of the final and binding decision described in § 80.05(a)(2).. Such a request may be made at the same time or independent of judicial review.
80.06 Implementation of fair hearing decisions[12] (01/15/2017, GCR 16-101)	
	Upon receiving a final and binding decision as described in § 80.05(a)(2), AHS will promptly implement the decision. (a) In connection with a QHP decision: (1) Implementation of the decision will be effective: (i) Prospectively, on the first day of the month following the date of the notice, or consistent with § 73.06 if applicable; or (ii) Retroactively, to the coverage effective date the appellant did receive or would have received if the appellant had enrolled in coverage under the incorrect eligibility determination that is the subject of the appeal, at the option of the individual. (2) AHS will redetermine the eligibility of household members who have not appealed their own eligibility determinations but whose eligibility may be affected by the fair hearing decision. (b) In connection with a Medicaid decision: (1) *Corrective payments.* If the decision is favorable to the individual, corrective payments will be promptly made, retroactive to the date an incorrect action was taken; or (2) If the decision is favorable to AHS: (i) If the decision results in the individual's ineligibility, AHS will terminate continued coverage on the last day of the month in which AHS acts to implement the decision; or (ii) If the decision results in a higher premium level, AHS will

[12] 45 CFR § 155.545(c).

	implement the higher premium level effective for the next monthly billing cycle following the decision.
80.07 Expedited administrative appeals[13] (01/01/2018, GCR 17-049)	
(a) In general	(1) Upon request, as specified at § 80.07(b), AHS will provide an expedited administrative appeal when the individual has an immediate need for health services and taking the time otherwise permitted for a fair hearing could jeopardize the individual's life or health or ability to attain, maintain or regain maximum function. (2) AHS will assist the individual requesting the expedited administrative appeal, if asked, and will not limit or interfere with the individual's right to appeal. (3) The person or persons deciding an individual's expedited administrative appeal request on behalf of AHS will not have been involved with the unfavorable determination or other issue that is the subject of the appeal. If it is determined that the expedited administrative appeal request meets the criteria for such appeals, the person or persons hearing and deciding the appeal on behalf of AHS will not have been involved in the unfavorable determination or other issue that is the subject of the appeal. (4) AHS will act promptly and in good faith to obtain the information necessary to resolve the expedited administrative appeal request and, if the request meets the criteria for such appeals, the expedited administrative appeal. For purposes of the expedited administrative appeal request, "necessary information" includes the opinion of the treating provider and the results of any face-to-face clinical evaluation or second opinion that may be required. (5) AHS will treat the scope of the expedited administrative appeal as set forth in § 80.04(d). (6) The processes set forth in this subsection will comply with the accessibility requirements in § 5.01(c).
(b) Requesting an expedited administrative appeal	An individual, treating provider, or other person identified at § 80.02(b) may request an expedited administrative appeal. A request for an expedited administrative appeal may be made to AHS orally, in writing, or by any other method identified at § 80.04(a). AHS will consider a fair hearing request as an expedited administrative appeal request if the individual, or other person appealing on the individual's behalf, indicates that the individual has an immediate need for health services and that taking the time otherwise permitted for a fair hearing could jeopardize the individual's life or health or ability to attain, maintain or regain maximum function. AHS will not take any punitive action against a provider who requests an

[13] 42 CFR § 431.224; 45 CFR § 155.540.

	expedited administrative appeal or supports an individual's request.
(c) Denial of an expedited administrative appeal request	(1) *Notice of denial of request.* If AHS denies a request for an expedited administrative appeal because it does not meet the criteria at § 80.07(a)(1), AHS will inform the individual that the request does not meet the criteria for expedited administrative appeals and that the appeal will be processed within the standard fair hearing timeframe. A telephonic notice of the denial of the request for the expedited administrative appeal will be promptly communicated (within 2 business days from the date of the individual's request for an expedited administrative appeal made pursuant to § 80.07(b)) to the individual and followed, within 2 business days of the telephonic notification, with a written notice. When giving a telephonic notice of denial, AHS will provide the individual with contact information for the Office of the Health Care Advocate. If HHS establishes a shorter timeframe for the denial notice, AHS will follow the timeframe established by HHS. (2) *Content of written notice.* The written notice will include: (i) The reason for the denial; (ii) An explanation that the appeal will continue to be processed within the standard fair hearing procedures and timeframe; (iii) An explanation of the individual's rights under the fair hearing process; and (iv) Contact information for the Office of the Health Care Advocate.
(d) Resolution of an expedited administrative appeal	(1) *Notice of approval of request.* If AHS determines that an individual's expedited administrative appeal request meets the criteria for such appeals, AHS will promptly (within 2 business days from the date of the individual's request for an expedited administrative appeal) telephonically notify the individual that AHS has approved the request for an expedited administrative appeal. AHS will send a written notice within 1 business day of the telephonic notification and will do so in the most expeditious manner possible which may include email. AHS will notify the individual, in both the telephonic and the written notifications, of the following: (i) The date and time of the hearing on the appeal; (ii) The location of the hearing if the hearing will be held in person or the telephone number to call if the hearing will be held by phone; (iii) Contact information for the Office of the Health Care Advocate; and (iv) The individual's rights during the expedited administrative

	appeal process, including the rights: to review the appeal record, including all documents and records considered by the person deciding the expedited administrative appeal; to be present at the hearing; to be accompanied or represented during the hearing; to present oral and written evidence; to present argument; and to pursue further review before the Human Services Board if the individual is dissatisfied with the outcome of the expedited administrative appeal. (2) *Timeline for resolving appeal.* (i) For appeals involving QHPs or MCA, other than Medicaid coverage of long-term care services and supports under MCA, AHS will hold a hearing and send notice of the written decision within 7 business days following the date the individual requests the expedited appeal. For appeals involving MABD or Medicaid coverage of long-term care services and supports under MCA or MABD, AHS will hold a hearing and send notice of the written decision as expeditiously as possible following the date the individual requests the expedited appeal. (ii) AHS will send the written decision within the timeframe in (i) above except in unusual circumstances in which case AHS will send the written decision within no more than 21 days following the individual's appeal request. Unusual circumstances means AHS cannot reach a decision because the individual requests delay or fails to take a required action or there is administrative or other emergency beyond AHS's control. AHS must send the individual written notice of the reason for the delay. (iii) If HHS establishes a shorter timeframe for resolving the expedited administrative appeal, including the days available for extension, AHS will follow the timeframe established by HHS. (3) *Hearing.* AHS will conduct a hearing to decide the unfavorable determination or other issue that is the subject of the expedited administrative appeal. The hearing will be recorded, and the individual will have the right to be present, to be accompanied and represented, to present oral and written evidence, and to present argument. AHS will provide the individual with the opportunity to review the appeal record, including all documents and records considered by the decision-maker. AHS will consider the information used to determine the individual's eligibility as well as any additional relevant evidence presented during the course of the expedited administrative appeal process, including at the hearing. Hearings conducted under this subsection are not contested cases pursuant to 3 VSA Chapter 25. The expedited administrative appeal process, as described under this subsection, is not a hearing within the meaning of 3 VSA § 3091. These hearing decisions have no precedential value.

	(4) *Content of written notice.* The written notice will include: (i) A statement of the decision, including a plain language description of the effect of the decision on the individual's eligibility; (ii) A summary of the facts relevant to the appeal; (iii) The legal basis, including the regulations, supporting the decision; (iv) The effective date of the decision; (v) An explanation that the appeal will continue to be processed within the standard fair hearing procedures and timeframe, unless the individual notifies the Human Services Board that the individual wishes to withdraw the request for a fair hearing; and (vi) Contact information for the Office of the Health Care Advocate. (5) *Implementation of the expedited administrative appeal decision.* AHS will promptly implement the expedited administrative appeal decision in accordance with the eligibility determination set forth in the written notice.
81.00 Disability determination appeal (01/15/2017, GCR 16-101)	
(a) SSA disability decision	(1) A final SSA disability determination is binding on AHS for 12 months or, if earlier, until the determination is changed by SSA, and may not be appealed through AHS's appeal process. However, when an individual who has been found "not disabled" by the SSA meets the requirements specified in § 8.04, they, though not entitled to an appeal of the SSA determination through AHS's appeal process, are entitled to a separate state determination of disability for the purposes of determining their eligibility for Medicaid. (2) AHS will refer all individuals who do not meet the requirements specified in § 8.04 for a separate state determination of disability and who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability, to SSA for reconsideration or reopening of the determination.
(b) State disability decision	If AHS has made a disability determination under the circumstances specified in § 8.04, the decision may be appealed to the Human Services Board.

82.00 Maintaining benefits/eligibility pending fair hearing[14] (01/01/2018, GCR 17-049)	
(a) In general – Medicaid	When an individual appeals a decision by AHS that ends their Medicaid eligibility, reduces their benefits or services, or imposes or increases a premium, the individual has the right, under certain conditions, to have their Medicaid eligibility, benefit and service level, and premium level continue as before the decision that resulted in the fair hearing request until the fair hearing is resolved, provided the individual submits the request before the effective date of the adverse action and pays any required premiums. If the last day before the adverse action date is on a weekend or holiday, the individual has until the end of the first subsequent working day to request the fair hearing. If the individual was subject to a premium prior to the adverse action that resulted in the fair hearing request, the individual must continue to pay premiums at the same level as the premiums prior to the adverse action in order for Medicaid eligibility to continue pending resolution of the fair hearing.
(b) Exceptions - Medicaid	(1) Continuation of Medicaid benefits does not apply when an individual's citizenship or immigration status has not been verified by the end of the 90-day opportunity period for resolving inconsistencies as described in § 54.05. (2) Continuation of Medicaid benefits without change does not apply when the fair hearing is based solely on a reduction or elimination of a benefit required by federal or state law affecting some or all individuals, or when the decision does not require the minimum advance notice.
(c) Waiver of right to continued Medicaid benefits	An individual may waive their right to continued Medicaid benefits. If they do so and are successful on a fair hearing, benefits will be paid retroactively.
(d) Recovery of value of continued Medicaid benefits	The state may recover from the individual the value of any continued Medicaid benefits paid during the fair hearing period when the individual withdraws the fair hearing before the decision is made, or following a final disposition of the matter in favor of the state.
(e) Continuation of Medicaid benefits pending appeal of SSA determination of disability; SSI/AABD enrollees	When an SSI/AABD enrollee is determined "not disabled" by the SSA and appeals this determination, their Medicaid benefits continue as long as their SSI/AABD benefits are continued (or could have been continued but the individual chose not to receive them during the appeal period) pending a SSA decision on the appeal. When eligibility for SSI/AABD benefits is terminated following a determination of "not disabled", Medicaid benefits end unless the individual applies and is found eligible for Medicaid on the

[14] 42 CFR § 431.230; 45 CFR § 155.525.

	basis of a categorical factor other than disability.
(f) Continuation of Medicaid benefits pending appeal of determination of disability; SSI/AABD applicants	When an individual enrolled in Medicaid applies for SSI/AABD and is determined "not disabled" by the SSA and files a timely appeal of this determination with the SSA, their Medicaid benefits continue until a final decision is made on the appeal, provided the SSA's determination of "not disabled" is the only basis on which they might be found ineligible for Medicaid. If they continue to appeal unfavorable decisions by SSA, the "final decision" is made by the SSA Appeals Council.
(g) Continuation of eligibility for enrollment in a QHP, APTC, and CSR pending appeal of redetermination.	After receipt of a valid fair hearing request or notice that concerns an appeal of a redetermination, if the individual (appellant) accepts eligibility pending an appeal, AHS will continue to consider the individual (appellant) eligible, while the fair hearing is pending, for QHP, APTC, the Vermont Premium Reduction and federal or state CSR, as applicable, in accordance with the level of eligibility immediately before the redetermination being appealed.
83.00 [Reserved](01/15/2017, GCR 16-101)	